

Message Text

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TO SECSTATE WASHDC 2583

C O N F I D E N T I A L MANILA 4134

E.O. 11652: GDS

TAGS: EGEN, ETRD, US, RP

SUBJECT: US/RP ECONOMIC NEGOTIATIONS

REFS: A) MANILA 4108; B) MANILA 4104

1. IN FIRST SUBSTANTIVE FOLLOW-UP TO TALKS REPORTED
REFTELS, INDUSTRY SEC PATERNO INVITED ECON/COMMERCIAL
COUNSELOR ARNOLD AND AMCHAM BOARD REP JOHNSON (CALTEX)
TO INFORMAL MEETING APRIL 7 TO DISCUSS PROBLEMS FORE-SHORE LEASES.
REITERATING POSITION STATED REF A
THAT SUCH LEASES HELD BY AMERICANS EXPIRE ON
JULY 3, 1974, PATERNO SAID THAT CABINET LEVEL EFFORT
NOW PROCEEDING TO REFINE SERVICE CONTRACT APPROACH, AND
HE NEEDED FROM US SIDE WIDER RANGE OF EXAMPLES OF PROBLEM
AS WELL AS DEEPER INSIGHTS INTO OPERATING SUTIATONS
OF INDIVIDUAL FORESHORE USERS.

2. DURING TWO HOUR TALK JOHNSON DID THOROUGH JOB
OF DELINEATING VARIED PROBLEMS OF FORESHORE LAND USE.
HE CITED (A) NEEDS OF OPERATORS ADJACENT TO THE FORE-
SHORE TO HAVE ACCESS TO FACILITIES SUCH AS PIERS,
PIPELINE TERMINALS, ETC.; (B) SPECIAL PROBLEMS OF
FIRMS WHOSE OPERATIONS ARE BUILT ON THE FORESHORE; AND
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(C) SIMPLE CASE OF INLAND FIRMS WHICH HAVE ACQUIRED

FORESHORE FACILITIES MERELY TO ASSURE A PREFERRED SYSTEM OF ACCESS TO THE SEA.

3. JOHNSON ARGUED FURTHER THAT THE SERVICE CONTRACT, AS CONTEMPLATED BY ARTICLE XIV, SECTION 9 OF THE 1973 CONSTITUTION, DID NOT SEEM TO MEET FULLY THE NEEDS OF ALL CASES, EVEN THOUGH IT HAD APPARENT RELEVANCE TO FACILITIES ACTUALLY BUILT ON THE FORESHORE. ARNOLD SUGGESTED THAT CONCEPTS OF EASEMENT AND RIGHT OF WAY SEEMED TO COVER BEST THE CASES WHERE ACCESS THROUGH THE FORESHORE WAS THE PROBLEM RATHER THAN USE PER SE. PATERNO SAID THAT HE DID NOT KNOW WHAT THE LEGAL BASIS FOR THE LATTER APPROACH MIGHT BE, BUT THAT BOTH APPROACHES WOULD BE RESEARCHED.

4. STRONG CASE MADE, AND ACCEPTED BY PATERNO, FOR (A) FURTHER REFINING THE CONCEPT OF SERVICE CONTRACT SO THAT IT WOULD NOT BE PRONE TO CHALLENGE, E.G. AS A VIOLATION OF THE ANTI-DUMMY LAW; (B) DEVELOPING A MORE PRECISE FORMULA OF THE "NATIONAL INTEREST" UNDER-PINNING OF SERVICE CONTRACTS RE UTILIZATION OF THE FORESHORE; AND (C) SO CONSTRUCTING THE LINK BETWEEN EXISTING FORESHORE LEASES AND ANY FOLLOW-UP ARRANGEMENT AS TO AVOID POSSIBLE CHALLENGE BY UNDOUBTEDLY INTERESTED THIRD PARTIES, E.G., ADJACENT LANDOWNERS.

5. PATERNO AGREED TO PRESENT ALL THESE POINTS TO GOP PANEL MEETING APRIL 8, AND TO FOLLOW-UP ESPECIALLY THE POSSIBILITIES FOR USE OF EASEMENTS AND RIGHTS OF WAY IN LIEU OF SERVICE CONTRACTS.

6. COMMENT: IN EMBASSY VIEW, THE SERVICE CONTRACT IS A USEFUL BUT AS YET INSUFFICIENTLY SPELLED-OUT DEVICE TO SUCCEED EXISTING LEASES. IT APPEARS, HOWEVER, THAT ENOUGH CONSTITUTIONAL LEEWAY EXISTS IN PHILIPPINE PRACTICE TO MAKE THIS TYPE CONTRACT WORK IN A NUMBER OF CASES. WE ARE CONSULTING CHAMBER LEADERSHIP TO SURFACE THE RANGE OF PROBLEMS AND POSSIBILITIES, BUT INTEND TO PROMOTE AS WIDE A USE AS POSSIBLE OF THE OBVIOUSLY LESS SENSITIVE DEVICES OF EASEMENTS AND RIGHTS

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OF WAY.
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